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***National Association of Charterboat Operators***  
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April 8, 2003

Docket Management Facility  
(USCG-2001-8773) - //  
U.S. Department of Transportation  
Room PL-401  
400 Seventh Street, S.W.  
Washington, DC 20590-0001

2003 APR 10 P 3:23

DEPT OF TRANSPORTATION  
DOT/MS

Re: Comments on proposed rulemaking DOT, Coast Guard, 46 CFR Part 4, (USCG-2001-8773), RIN 2115-AG07, Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents, dated February 28, 2003.

Dear Sirs:

We respectfully request your serious consideration of our comments and concerns regarding the above. NACO represents Charterboat owners and operators from Alaska to the Gulf of Mexico to Maine. NACO has maintained an excellent cooperative relationship with the USCG since our founding and has worked well with them in development and implementation of various regulations and requirements that affect the charterboat industry. We are the leading voice representing charterboat operations. Here are our comments and concerns regarding the proposed rule.

- 1: *Statutory Time Requirements for Alcohol Testing After an SMI.*  
Our industry currently complies with required drug and alcohol testing regulations by having crewmembers enrolled in qualified drug testing consortiums, pre-employment screening, and post accident testing. Charterboats routinely depart from and return to the same docking facility on every trip. Charterboats in the United States have a clearly known history of very few SMIs. The proposed rule will seriously increase the burden and expense of compliance to an industry with a highly recognized history of safety.

In addition, the standard crew size of the vast majority of charter boats both un-inspected and inspected, is generally a Captain and a deckhand. Any SMI should require immediate qualified response from a trained individual. The captains of these vessels provide such experience. We suggest that when trying to reduce the impact of an SMI that the captain will be the person who will be instrumental in alleviating the impacts of an SMI. Generally, passengers are unfamiliar with emergency situations and therefore cannot be expected to supervise reducing the impact of an SMI. We suggest that a charter boat is always within a couple of hours of an experienced professional shore side facility and that it is prudent and reasonable to allow the testing to be done on shore. This argument also applies to drug testing.

2: *Adding a Requirement To Carry Alcohol-Testing Devices.*

The above arguments also apply here. In addition, the expense of first issue of any testing device, future expense of upkeep and updating, expense of educating the proper use and upkeep of such devices is cost prohibitive for charter boat businesses. The potential liability of improper testing and defective equipment could result in the future employment of an individual tested and be so astronomical as to force a charterboat owner to lose his business and possibly his personal assets. Currently there is no insurance offered for such liability, but should it become available it will most certainly be extremely high, which will result in additional costs to the small business.

Your assumption that if a firms revenues are less than \$500,000, or it employs less than 20 employees, then it owns 5 vessels, and if a firms revenues are in the range of \$500,000 to \$5 million, or employs between 20 to 500 employees, then it owns 10 vessels is flawed. We do not know how these assumptions were developed. They do not represent the charterboat industry. Currently there are over 16,000 charterboats in the United States. The vast majority of these boats are single vessel owners. Your economic impact information is incorrect and therefore does not give a fair or even adequate representation of the economic impact, which will be felt by this industry. At a minimum you need to do a full economic impact study of the burden on charter boats created by this proposal before any consideration is given to implementation. Your projected initial cost of testing devices of \$925 is a substantial economic burden to an operation that will barely net \$20,000 per year. In addition, your recurring annual costs of \$750, is also a substantial economic burden, which cannot be recovered. The fact is that shoreside testing facilities, which are already paid for as part of compliance with current drug and alcohol testing requirements is more than adequate and provides the ability to fully comply with current regulations.

We highly recommend that you eliminate this proposed rule from consideration. At a minimum, we would recommend that charterboat operations with fewer than 20 employees be exempt from this requirement. We urge you to hold public hearings regarding this matter so the affected operations can adequately express their concerns. Recognizing that your economic assumptions are far from reality we suggest that this proposed rule will have an extreme detrimental economic impact and therefore needs more consideration required by that act. Your assertion that only 3500 small entities will be affected is incorrect, as we know of over 16,000 small entities that will be affected by this proposal. Each of the 16,000 small entities has revenues of less than \$5 million and the vast majority employ 1 to 2 persons.

On behalf of the NACO membership, I respectfully request that you reconsider the proposed rule. I am available to discuss this matter with anyone. We are proud of our industry, our safety record, and our efforts to work in a cooperative manner with all regulatory agencies. Please keep us informed of all actions regarding this proposed rule.

Sincerely,

*R.F. Zales II*

R.F. Zales, II  
Chairman